

PT 95-50  
Tax Type: PROPERTY TAX  
Issue: Charitable Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS

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PINECREST VILLAGE )  
 )  
 ) Docket #s 92-MR-40  
Applicant ) On Remand from the Circuit  
 ) Court of Ogle County  
 ) (90-71-8)  
 ) and  
 ) 92-71-19  
 )  
v. ) Parcel Index # 16-08-27-480-023  
 ) (Ogle County)  
 )  
THE DEPARTMENT OF REVENUE ) George H. Nafziger  
OF THE STATE OF ILLINOIS ) Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorneys John J. Durso and Emily Blum appeared on behalf of Pinecrest Village (hereinafter referred to as the "applicant"). Attorneys Daniel C. Hawkins and Timothy B. Zollinger appeared on behalf of Ogle County, the Village of Mt. Morris, Mt. Morris School District 261, Mt. Morris Township, Highland Community College, and Mt. Morris Fire Protection District (hereinafter referred to as the "Taxing Districts"). Mr. Michael Rock, assistant state's attorney of Ogle County, appeared on behalf of the Ogle County Board of Review.

SYNOPSIS: Hearings were held in this matter on November 15, 1994, and March 15, 1995, pursuant to the Stipulation and Remand Order in Pinecrest Village v. Department of Revenue, Circuit Court of Ogle County Docket No. 92-MR-40, and also, Department of Revenue Docket No. 92-71-19, at 100 West Randolph Street, Chicago, Illinois, to determine whether or not Ogle County parcel No. 16-08-27-480-023 should be exempt from real estate taxes for the 1990 and 1992 assessment years.

Rev. Carl Myers, a member of the general board of the Church of the Brethren, Rev. Richard Bright, chaplain of the applicant, Mr. Vernon Showalter, administrator of the applicant, Ms. Mary Jane Warkins, apartment manager of the applicant, Mr. Larry Elliott, director of marketing of the applicant, and Mr. James Harrison, Clerk of the Board of Review of Ogle County, were present, and testified on behalf of the applicant.

The issues in this matter include first whether the applicant owned the parcel here in issue and the buildings thereon, during the 1990 and 1992 assessment years. The second issue is whether the applicant is primarily a religious organization. The third issue is whether the applicant used the parcel here in issue and the buildings thereon, primarily for religious purposes during the 1990 and 1992 assessment years. The fourth issue is whether the applicant is primarily a charitable organization. The fifth issue is whether the applicant used the parcel here in issue and the buildings thereon, for primarily charitable purposes during the 1990 and 1992 assessment years. The final issue is whether Mr. Elliott occupied one of the apartments in the buildings on the parcel here in issue during a portion of 1990, for charitable or residential purposes. Following the submission of all of the evidence and a review of the record, it is determined that the applicant owned the parcel here in issue and the buildings thereon, during the 1990 and 1992 assessment years. It is also determined that the applicant is not primarily a religious organization. It is further determined that the applicant did not use the parcel here in issue and the buildings thereon, primarily for religious purposes during the 1990 and 1992 assessment years. It is also determined that the applicant is primarily a charitable organization. It is further determined that the applicant used the parcel here in issue and the buildings thereon, for primarily charitable purposes during the 1990 and 1992 assessment years. Finally, it is determined that Mr. Elliott occupied one of the

apartments in the buildings on the parcel here in issue for residential purposes during a portion of the 1990 assessment year.

FINDINGS OF FACT:

1. On January 3, 1991, the Ogle County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning this parcel and the buildings thereon, for the 1990 assessment year, to the Illinois Department of Revenue (hereinafter referred to as the "Department").

2. On February 21, 1991, the Department exempted this parcel for the 1990 assessment year.

3. On March 8, 1991, one of the attorneys for the Taxing Districts filed a request for a formal hearing.

4. On October 15, 1991, a formal hearing was held in that matter.

5. On June 5, 1992, the Director of Revenue issued his decision in that case, holding that since the applicant had failed to comply with the notice requirements of 35 ILCS 205/108(6) [formerly 1989 Illinois Revised Statutes, Chapter 120, Paragraph 589 (6)], that the Department lacked jurisdiction to consider the applicant's request for exemption.

6. The applicant appealed that decision, pursuant to the Administrative Review Law.

7. The Circuit Court of Ogle County in Pinecrest Village v. Department of Revenue, Docket No. 92-MR-40, determined that the Department did have jurisdiction, and remanded the case to the Department for a decision on the merits of the applicant's request for exemption.

8. On February 23, 1993, the Ogle County Board of Review transmitted an Application for Property Tax Exemption To Board of Review, concerning this parcel and the buildings thereon, for the 1992 assessment year to the Department.

9. On August 5, 1993, the Department exempted the parcel here in issue

and the buildings thereon, for the 1992 assessment year.

10. An attorney for the Taxing Districts again requested a formal hearing in this matter.

11. The hearings on the remand of the applicant's 1990 request for exemption of the parcel here in issue and the buildings thereon, and the applicant's 1992 request for exemption for said parcel and the buildings thereon, were held on November 15, 1994, and March 15, 1995.

12. At the hearing on November 15, 1994, one of the attorneys for the Taxing Districts moved that the exemption proceedings concerning Ogle County parcel No. 16-08-27-480-023 and the buildings thereon, for the 1990 and 1992 assessment years be consolidated. There being no objections, said motion was allowed, and the 1990 and 1992 requests for exemption were ordered to be consolidated for purposes of the record (Tr. p. 19).

13. During 1990 and 1992, the Pinecrest complex included the parcel here in issue, and also adjoining parcels which contained nine independent living units known as the cottages, and also Pinecrest Manor, a licensed nursing home.

14. On October 23, 1986, the Brethren Home conveyed the parcel here in issue to the applicant by a warranty deed.

15. During 1990 and 1992, the parcel here in issue was improved with two twenty-four unit, three-story congregate care apartment buildings.

16. In addition to 48 apartment units, these two buildings contained a game room, a dining room, a serving kitchen, two guest rooms, a large lobby, and two offices. One of the offices was occupied by the apartment manager of the applicant, and the other was occupied by the marketing director of the applicant during the 1990 and 1992 assessment years.

17. The applicant was incorporated on October 22, 1986, pursuant to the "General Not For Profit Corporation Act" of Illinois, for purposes which included the following:

"Said corporation is organized exclusively for charitable, benevolent and religious purposes to overcome the present inadequacy of housing for elderly persons, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations, under Section 501(c)(3) of the Internal Revenue Code of 1954."

18. Article VII, Section 3, of the bylaws, adopted by the board of directors of the applicant on July 26, 1987, and in force during 1990 and 1992, read in part as follows:

"The Board Shall reduce or waive the entrance fee, assignment of assets, or fee for services of any individual based upon that individual's ability to pay."

19. By a letter dated May 23, 1988, the Internal Revenue Service determined that the applicant qualified for exemption from federal income tax pursuant to Internal Revenue Code Section 501(c)(3).

20. The Pinecrest complex which includes the parcel here in issue, and also the adjoining parcels, is affiliated with the Church of the Brethren, Illinois/Wisconsin District.

21. The chapel for this facility is located on another parcel in Pinecrest Manor, the licensed nursing home (Tr. p. 62).

22. The chaplain's office for the facility is also located in the Pinecrest Manor facility, and not on the parcel here in issue (Tr. p. 94).

23. The facility of the applicant contains three types of unfurnished apartment units: one-bedroom units, containing 600 square feet; two-bedroom units, containing 920 square feet; and two-bedroom deluxe units, containing 1,040 square feet.

24. During both 1990 and 1992, prospective residents had the option of either purchasing the right to use a unit for their lifetime, or of renting a unit.

25. During 1990 and 1992, the purchase option required the payment of an entrance fee, or founder's fee. For the one-bedroom units, during both 1990 and 1992, the entrance fee was \$30,000.00, for the two-bedroom units,

the entrance fee was \$43,500.00, and for the two-bedroom deluxe units the entrance fee was \$59,700.00.

26. During 1990 and 1992, the monthly service fees pursuant to the purchase option, for the one-bed units was \$775.00 per month for one person, and \$1,025.00 per month for two persons; for the two-bedroom units, it was \$875.00 per month for one person, and \$1,125.00 per month for two persons; and for the two bedroom deluxe units, it was \$975.00 per month for one person, and \$1,225.00 per month for two persons.

27. During 1990 and 1992, there were a limited number of garages available for the use of the residents of this facility. The cost to purchase the use of a garage during those years was \$5,760.00 per garage.

28. The two guest bedrooms in the facility rented for \$15.00 per night during the 1990 and 1992 assessment years.

29. As an after-filed exhibit, at the request of the Taxing Districts, the applicant submitted two rental agreement price lists. However, the exhibit did not indicate when either of the rental price lists was in use by the applicant.

30. The first of these price lists showed the rent for the one-bedroom units to be \$1,050.00 per month for one resident, or \$1,100.00 per month for two residents. The rent for the two-bedroom units on this sheet was \$1,325.00 per month for one person, and \$1,375.00 per month for two persons. The rent for the two-bedroom deluxe units on said first sheet was \$1,650.00 per month for one person, and \$1,700,.00 per month for two persons.

31. The second price list showed the rent for the one-bedroom units to be \$1,200.00 per month for one person, and \$1,400.00 per month for two persons. The rent for the two-bedroom units on this second price list was \$1,475.00 per month for one person, and \$1,675.00 per month for two persons. The rent for the two-bedroom deluxe units for one person was

\$1,800.00 per month, and for two persons, it was \$2,000.00 per month on this second price sheet.

32. During 1990, the number of units which were rented varied from six to seven. During 1992, the number of units which were rented varied from four to six (Tr. p. 334).

33. The persons who rented units moved in with the understanding that if the unit was later sold, they could be asked to move to another unit on 90 days notice.

34. At no time during either 1990 or 1992, were all of the 48 units occupied.

35. During the 1990 and 1992 assessment years, it was the policy of applicant to waive, or reduce, entrance fees, monthly charges, and rental fees, in cases of need.

36. During 1990 and 1992, the applicant, in fact, waived the entrance fee on one unit, and reduced either the monthly fee or the monthly rental for at least four other units.

37. Concerning the units on which an entrance fee was paid, followed by a monthly fee, Mr. Elliott testified that the person was buying the right to live in the unit, as long as their health would permit. The agreement with a person paying an entrance fee did not give that person legal title to the property. This facility was not either a real estate cooperative, or a condominium, under Illinois law (Tr. p. 336).

38. During 1990 and 1992, the applicant did not have any capital, capital stock, or shareholders, and no individual benefited from the enterprise.

39. During 1990 and 1992, the applicant accepted all persons who were in need of a congregate care living facility, and were generally ambulatory, regardless of ability to pay.

40. Mr. Elliott testified that during part of the 1990 assessment year,

he lived in one of the apartments in the applicant's facility (Tr. p. 291).

41. The Brethren Home operates Pinecrest Manor, the nursing home located on land which adjoins the parcel here in issue.

42. The Brethren Home is considered by the certified public accountants for the applicant to be a related party.

43. During 1990 and 1992, the Brethren Home made interest-free loans to the applicant, as well as making loan payments for the applicant on which the Brethren Home was guarantor.

44. I find that the primary corporate purpose and use of the parcel here in issue and the building thereon, during the 1990 and 1992 assessment years, was the operation of a congregate care facility for the elderly.

CONCLUSIONS OF LAW: Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

1989 Illinois Revised Statutes, Chapter 120, Paragraph 500.2, exempts certain property from real estate taxation in part as follows:

"All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...and not leased or otherwise used with a view to profit,...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956); *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944), and *People ex rel. Lloyd v.*



University of Illinois, 357 Ill. 369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); *Girl Scouts of DuPage County Council, Inc. v. Department of Revenue*, 189 Ill.App.3d 858 (2nd Dist. 1989); and *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986).

In the case of *Fairview Haven v. The Department of Revenue*, 153 Ill.App.3d 763 (4th Dist. 1987), the court had before it a licensed nursing home and 16 independent living units located on property owned by an organization organized, or supported, by four Apostolic Christian Church of America Congregations. In that case, the Court concluded that the Department's inquiring into the primary use of the church-owned and operated nursing home and independent living units, did not violate first amendment rights, since the Department did not assess the validity or belief structure, or determine whether particular conduct conformed to standards or purposes of the religious group, but merely concluded that the primary purpose of the organization was the care and keeping of the elderly. Consequently, the Court concluded that the facilities in the *Fairview Haven* case were not used primarily for religious purposes. That was also the finding of the primary purpose of the use of the parcel here in issue and the buildings thereon, during the 1990 and 1992 assessment years. While it is undisputed that the applicant is affiliated with the Church of the Brethren, it is also clear that the primary use of the parcel here in issue and the buildings thereon, during 1990 and 1992, was the providing of congregate care to the elderly. The primary use of this parcel during those years, I conclude, was not primarily for religious, or school purposes.

1989 Illinois Revised Statutes, Chapter 120, Paragraph 500.7, exempts

certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit....All old peoples homes or homes for the aged...shall qualify for the exemption stated herein if upon making application for such exemption, the applicant provides affirmative evidence that such home...is an exempt organization pursuant to paragraph (3) of Section 501(c) of the Internal Revenue Code,...and...the bylaws of the home...provide for a waiver or reduction of any entrance fee, assignment of assets or fee for services based upon the individual's ability to pay,...."

It has previously been determined that the applicant had both a 501(c)(3) exemption and a bylaw providing for the waiver, or reduction of entrance fees, assignment of assets, or fees for service based on an individual's ability to pay, during both the 1990 and 1992 assessment years.

In the case of *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. It has previously been found that the applicant did, in fact, waive, or reduce, entrance fees, monthly charges, and also monthly rental payments, in cases of need. It has also been determined that the applicant accepted persons for residency who could benefit from living in a congregate care facility, regardless of their ability to pay. It has been found that the applicant had no stock or stockholders, and no one profited

from the enterprise. It has also been determined that the applicant's funds were derived from entrance fees, monthly fees, monthly rentals, and private charity, and were held in trust for the objects expressed in the charter. Finally, it has been determined that the primary use of the property was for charitable purposes during the 1990 and 1992 assessment years. I therefore conclude that the applicant met each of the foregoing six guidelines, during the 1990 and 1992 assessment years. I consequently conclude that the applicant is a charitable organization which used Ogle County parcel No. 16-08-27-480-023 and the buildings thereon, for charitable purposes during the 1990 and 1992 assessment years.

Concerning the apartment which Mr. Elliott occupied as his residence during part of the 1990 assessment year, in the case of *MacMurray College v. Wright*, 38 Ill.2d 272 (1967), the Supreme Court considered whether or not faculty and staff housing owned by a college, was used for school purposes. In that case, the Court applied a two-part test. First, were the residents of the houses required to live in their residences because of their exempt duties for the college, or were they required to, or did they perform any of their exempt duties there? No evidence was offered in this case to indicate that Mr. Elliott's residing in one of the apartments in one of the buildings on this parcel qualified for use for charitable purposes under either of the *MacMurray* tests. I therefore conclude that during the period Mr. Elliott occupied one of the apartments in the buildings on this parcel during 1990, it was used for residential purposes, and not for charitable purposes.

I therefore recommend that Ogle County parcel No. 16-08-27-480-023 and the buildings thereon, be exempt from real estate tax for the 1990 and 1992 assessment years, except for the area of the apartment occupied by Mr. Elliott during the 1990 assessment year, which was not used for charitable purposes during that period.

I further recommend that the area of the apartment occupied by Mr. Elliott located on Ogle County parcel No. 16-08-27-480-023, remain on the tax rolls for the percentage of the 1990 assessment year during which he occupied said apartment and that the taxes on said area be assessed to the applicant, the owner thereof.

Respectfully Submitted,

George H. Nafziger  
Administrative Law Judge

September , 1995